

HERMITAGE INSURANCE )  
COMPANY, )  
 )  
Plaintiff, )  
 )  
v. ) CASE NO.: \_\_\_\_\_  
 )  
VERSATILE CONTRACTORS, )  
INC.; DKM ENTERPRISES, INC.; )  
ADDA KLEWSAAT, )  
 )  
Defendants. )

NOW COMES Plaintiff Hermitage Insurance Company (hereinafter “Hermitage”), and files this Complaint for Declaratory Judgment and shows unto the Court as follows:

1. Plaintiff Hermitage is a New York corporation with its principal place of business in White Plains, New York. Hermitage is qualified to engage and does engage in the business of insurance in the State of Alabama.

2. Defendant Versatile Contractors, Inc. (hereinafter “Versatile”) is an Alabama corporation which does business in Shelby County, Alabama. Versatile is

a party in the underlying case styled *Adda Klewsaat v. DKM Enterprises, Inc.*, CV-2009-1262, Circuit Court of Shelby County, Alabama.

3. Defendant Adda Klewsaat (hereinafter “Klewsaat”) is over the age of nineteen (19) years and is a citizen of Shelby County, Alabama. Ms. Klewsaat is the plaintiff in the underlying case of *Adda Klewsaat v. DKM Enterprises, Inc.*, CV-2009-1262, Circuit Court of Shelby County, Alabama.

4. Defendant DKM Enterprises, Inc. (hereinafter “DKM”) is an Alabama corporation which does business in Shelby County, Alabama. Defendant DKM is an Alabama corporation organized and existing under the laws of the State of Alabama. Moreover, at all times material to this Complaint, Defendant DKM acted as the general contractor in the construction of Ms. Klewsaat’s home. DKM is a defendant in the underlying case of *Adda Klewsaat v. DKM Enterprises, Inc.*, CV-2009-1262, Circuit Court of Shelby County, Alabama.

#### **JURISDICTION**

5. An actual controversy of a justiciable nature exists between Hermitage and the Defendants involving the rights, interests, and liabilities under a policy of insurance issued by Hermitage to Versatile, which said controversy involves a policy of insurance with a limit in excess of the jurisdictional requirements. Hermitage

issued an insurance policy to Versatile which included commercial general liability coverage for covered “occurrences.”

6. Pursuant to the Declaratory Judgment Act 28 U.S.C. § 2201, Defendants Versatile, Klewsaat and DKM are all real parties in interest to the instant action based on the underlying suit: *Adda Klewsaat v. DKM Enterprises, Inc.*, CV-2009-1262, Circuit Court of Shelby County, Alabama.

7. The jurisdiction in this cause is pursuant to the Declaratory Judgement Act (28 U.S.C. § 2201) and diversity of citizenship (28 U.S.C. §1332). Klewsaat’s original Complaint alleges that the home cost \$700,000 to build and demands \$1,000,000 in damages. DKM’s Third-Party Complaint seeks full reimbursement and indemnification from Versatile for any damages awarded to Klewsaat. DKM has also demanded defense and indemnity from Hermitage for Klewsaat’s claims. The amount in controversy therefore exceeds the \$75,000 jurisdictional limit (28 U.S.C. 8, 1332). Venue is appropriate pursuant to 28 U.S.C. §1391.

### **FACTS**

8. On May 26, 2009, Klewsaat filed a Complaint against DKM regarding the construction of the Klewsaat home. Generally, Klewsaat alleges that she began noticing problems with the house, the house contained significant construction defects,

deficiencies, and problem areas including, but not limited to, water intrusion and termites.

9. Versatile was hired by DKM to roof the house.

10. The original Complaint alleges negligence/wantonness, breach of contract, fraud/misrepresentation/suppression, unjust enrichment, breach of warranty, breach of implied warranty of habitability, conspiracy, accounting, and negligent hiring/training/supervision.

11. DKM filed a Third-Party Complaint against Versatile seeking indemnity from Klewsaat's claims.

12. DKM has also demanded defense and indemnity from Hermitage for the claims brought against it by Klewsaat, alleging that DKM is an additional insured to Versatile's policy of insurance with Hermitage. Hermitage seeks a declaration that it has no duty to defend or indemnify DKM from the Klewsaat claims asserted in the underlying case.

13. Currently, Hermitage is defending Versatile under a reservation of rights. However, there is an issue whether there was an "occurrence," as defined by the policy, in this case. There is also a dispute whether, if there was an "occurrence," the alleged "occurrence" occurred during the insurance policy period.

14. There is also a dispute as to whether Versatile and DKM provided Hermitage timely notice of the alleged “occurrence,” failure of which would violate the terms and conditions of the insurance policy.

15. There is also a dispute whether Versatile and DKM undertook an obligation on their own without Hermitage’s consent, which would violate the terms and conditions of the insurance policy.

16. Also, the Complaint seeks damages for claims not covered by the policy, specifically property damage to Versatile’s and DKM’s work and/or product and the cost to replace, restore or repair Versatile’s and DKM’s work and/or product.

**PRAYER FOR RELIEF**

17. Based upon the foregoing, Hermitage requests the following relief:

- (a) that the Court assume jurisdiction in this cause of action;
- (b) that the Court conduct such hearings as it deems necessary to resolve the declaratory judgment action;
- (c) that the Court declare that Hermitage has no duty to defend or indemnify DKM from the allegations of Klewsaat asserted in the underlying case;
- (d) that the Court declare that Hermitage has no duty to defend or indemnify Versatile from the allegations of DKM asserted in the

Third-Party Complaint brought against Versatile by DKM in the underlying case;

- (e) for such further, additional and different relief to which it may be entitled in the premises.

**RESPECTFULLY SUBMITTED** this 25<sup>th</sup> day of February, 2011.

s/ Micheal S. Jackson

**MICHEAL S. JACKSON**

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**PLEASE SERVE DEFENDANTS VIA CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED AS FOLLOWS:**

**Versatile Contractors, Inc.**

c/o Viann Jackson, Registered Agent  
24 Autry Drive  
Chelsea, AL 35043

**Adda Klewsaat**

352 Highland View Dr.  
Birmingham, AL 35242

**DKM Enterprises, Inc.**

c/o Brian W. Doyle, Registered Agent  
2073 Lake View Lane  
Birmingham, AL 35244